

## **Senate Bill No. 80**

### **CHAPTER 21**

An act to amend Sections 19136 and 19167 of, and to add Section 17052 to, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 24, 2015. Filed with  
Secretary of State June 24, 2015.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 80, Committee on Budget and Fiscal Review. Personal income taxes: earned income credit.

The Personal Income Tax Law allows various credits against the taxes imposed by that law, including certain credits that are allowed in modified conformity to credits allowed by federal income tax laws. Federal income tax laws allow a refundable earned income tax credit for certain low-income individuals who have earned income and who meet certain other requirements.

This bill, for taxable years beginning on or after January 1, 2015, in modified conformity with federal income tax laws, would allow an earned income credit against personal income tax, and a payment in excess of that credit amount, to an eligible individual that is equal to that portion of the earned income tax credit allowed by federal law as determined by the earned income tax credit adjustment factor as set forth in the annual Budget Act.

Existing law requires any bill authorizing a new personal income tax credit to contain, among other things, specific goals, purposes, and objectives that the tax credit will achieve, detailed performance indicators, and data collection requirements, as provided.

To measure whether the earned income credit achieves its intended purpose, this bill would require the Franchise Tax Board to annually prepare a specified written report and to provide that report to specified legislative committees.

Existing law establishes the continuously appropriated Tax Relief and Refund Account, and provides that payments required to be made to taxpayers or other persons from the Personal Income Tax Fund are to be paid from that account.

By authorizing new payments from that account for amounts in excess of personal income tax liabilities, this bill would make an appropriation.

The Personal Income Tax Law imposes taxes based upon taxable income and also imposes interest and penalties with regard to those taxes under specified circumstances, including a penalty for the underpayment of estimated tax. Existing law provides no addition to tax shall be imposed to

the extent that the underpayment was created or increased by any law that is chaptered during and operative for the taxable year of the underpayment.

This bill would provide that addition to tax shall not be imposed if the applicable percentage for the earned income tax credit for the taxable year was less than the applicable percentage for that credit for the preceding taxable year and would impose a penalty, in conformity with federal law, for failure to be diligent in determining eligibility for the earned income tax credit, as specified.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 17052 is added to the Revenue and Taxation Code, to read:

17052. (a) (1) For each taxable year beginning on or after January 1, 2015, there shall be allowed against the “net tax,” as defined by Section 17039, an earned income tax credit in an amount equal to an amount determined in accordance with Section 32 of the Internal Revenue Code, relating to earned income, as applicable for federal income tax purposes for the taxable year, except as otherwise provided in this section.

(2) (A) The amount of the credit determined under Section 32 of the Internal Revenue Code, relating to earned income, as modified by this section, shall be multiplied by the earned income tax credit adjustment factor for the taxable year.

(B) Unless otherwise specified in the annual Budget Act, the earned income tax credit adjustment factor for a taxable year beginning on or after January 1, 2015, shall be 0 percent.

(C) The earned income tax credit authorized by this section shall only be operative for taxable years for which resources are authorized in the annual Budget Act for the Franchise Tax Board to oversee and audit returns associated with the credit.

(b) (1) In lieu of the table prescribed in Section 32(b)(1) of the Internal Revenue Code, relating to percentages, the credit percentage and the phaseout percentage shall be determined as follows:

| In the case of an eligible individual with: | The credit percentage is: | The phaseout percentage is: |
|---|---------------------------|-----------------------------|
| No qualifying children                      | 7.65%                     | 7.65%                       |
| 1 qualifying child                          | 34%                       | 34%                         |
| 2 or more qualifying children               | 40%                       | 40%                         |

(2) (A) In lieu of the table prescribed in Section 32(b)(2)(A) of the Internal Revenue Code, the earned income amount and the phaseout amount shall be determined as follows:

| In the case of an eligible individual with: | The earned income amount is: | The phaseout amount is: |
|---|------------------------------|-------------------------|
| No qualifying children                      | \$3,290                      | \$3,290                 |
| 1 qualifying child                          | \$4,940                      | \$4,940                 |
| 2 or more qualifying children               | \$6,935                      | \$6,935                 |

(B) Section 32(b)(2)(B) of the Internal Revenue Code, relating to joint returns, shall not apply.

(3) Section 32(b)(3)(A) of the Internal Revenue Code, relating to increased percentage for three or more qualifying children, is modified by substituting “the credit percentage and phaseout percentage is 45 percent” for “the credit percentage is 45 percent.”

(c) (1) Section 32(c)(1)(A)(ii)(I) of the Internal Revenue Code is modified by substituting “this state” for “the United States.”

(2) Section 32(c)(2)(A) of the Internal Revenue Code is modified as follows:

(A) Section 32(c)(2)(A)(i) of the Internal Revenue Code is modified by deleting “plus” and inserting in lieu thereof the following: “and only if such amounts are subject to withholding pursuant to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.”

(B) Section 32(c)(2)(A)(ii) of the Internal Revenue Code shall not apply.

(3) Section 32(c)(3)(C) of the Internal Revenue Code, relating to place of abode, is modified by substituting “this state” for “the United States.”

(d) Section 32(i)(1) of the Internal Revenue Code is modified by substituting “\$3,400” for “\$2,200.”

(e) In lieu of Section 32(j) of the Internal Revenue Code, relating to inflation adjustments, for taxable years beginning on or after January 1, 2016, the amounts specified in paragraph (2) of subdivision (b) and in subdivision (d) shall be recomputed annually in the same manner as the recomputation of income tax brackets under subdivision (h) of Section 17041.

(f) If the amount allowable as a credit under this section exceeds the tax liability computed under this part for the taxable year, the excess shall be credited against other amounts due, if any, and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(g) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the Franchise Tax Board pursuant to this section.

(h) Notwithstanding any other law, amounts refunded pursuant to this section shall be treated in the same manner as the federal earned income refund for the purpose of determining eligibility to receive benefits under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or amounts of those benefits.

(i) (1) For the purpose of implementing the credit allowed by this section for the 2015 taxable year, the Franchise Tax Board shall be exempt from the following:

(A) Special Project Report requirements under State Administrative Manual Sections 4819.36, 4945, and 4945.2.

(B) Special Project Report requirements under Statewide Information Management Manual Section 30.

(C) Section 11.00 of the 2015 Budget Act.

(D) Sections 12101, 12101.5, 12102, and 12102.1 of the Public Contract Code.

(2) The Franchise Tax Board shall formally incorporate the scope, costs, and schedule changes associated with the implementation of the credit allowed by this section in its next anticipated Special Project Report for its Enterprise Data to Revenue Project.

(j) (1) In accordance with Section 41 of the Revenue and Taxation Code, the purpose of the California Earned Income Tax Credit is to reduce poverty among California's poorest working families and individuals. To measure whether the credit achieves its intended purpose, the Franchise Tax Board shall annually prepare a written report on the following:

(A) The number of tax returns claiming the credit.

(B) The number of individuals represented on tax returns claiming the credit.

(C) The average credit amount on tax returns claiming the credit.

(D) The distribution of credits by number of dependents and income ranges. The income ranges shall encompass the phase-in and phaseout ranges of the credit.

(E) Using data from tax returns claiming the credit, including an estimate of the federal tax credit determined under Section 32 of the Internal Revenue Code, an estimate of the number of families who are lifted out of deep poverty by the credit and an estimate of the number of families who are lifted out of deep poverty by the combination of the credit and the federal tax credit. For the purposes of this subdivision, a family is in "deep poverty" if the income of the family is less than 50 percent of the federal poverty threshold.

(2) The Franchise Tax Board shall provide the written report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, the Senate and Assembly Committees on Appropriations, the Senate Committee on Governance and Finance, the Assembly Committees on Revenue and Taxation, and the Senate and Assembly Committees on Human Services.

(k) The tax credit allowed by this section shall be known as the California Earned Income Tax Credit.

SEC. 2. Section 19136 of the Revenue and Taxation Code is amended to read:

19136. (a) Section 6654 of the Internal Revenue Code, relating to failure by an individual to pay estimated income tax, shall apply, except as otherwise provided.

(b) Section 6654(a)(1) of the Internal Revenue Code is modified to refer to the rate determined under Section 19521 in lieu of Section 6621 of the Internal Revenue Code.

(c) (1) Section 6654(e)(1) of the Internal Revenue Code, relating to exceptions where the tax is a small amount, does not apply.

(2) No addition to the tax shall be imposed under this section if the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 for the preceding taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, or the tax computed under Section 17041 or 17048 upon the estimated income for the taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, is less than five hundred dollars (\$500), except in the case of a separate return filed by a married person the amount shall be less than two hundred fifty dollars (\$250).

(d) Section 6654(f) of the Internal Revenue Code does not apply and for purposes of this section the term “tax” means the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 less any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, other than the credit provided by subdivision (a) of Section 19002.

(e) (1) The credit for tax withheld on wages, as specified in Section 6654(g) of the Internal Revenue Code, is the credit allowed under subdivision (a) of Section 19002.

(2) (A) Section 6654(g)(1) of the Internal Revenue Code is modified by substituting the phrase “the applicable percentage” for the phrase “an equal part.”

(B) For purposes of this paragraph, “applicable percentage” means the percentage amount prescribed under Section 6654(d)(1)(A) of the Internal Revenue Code, as modified by subdivision (a) of Section 19136.1.

(f) This section applies to a nonresident individual.

(g) (1) No addition to tax shall be imposed under this section to the extent that the underpayment was created or increased by either of the following:

(A) Any law that is chaptered during and operative for the taxable year of the underpayment.

(B) If, for a taxable year prior to its repeal, the adjustment factor for the credit authorized by Section 17052 for the taxable year was less than the adjustment factor for that credit for the preceding taxable year.

(2) (A) Notwithstanding Section 18415, subparagraph (A) of paragraph (1) applies to penalties imposed under this section on or after January 1, 2005.

(B) Notwithstanding Section 18415, subparagraph (B) of paragraph (1) applies to penalties imposed under this section on or after January 1, 2016.

(h) The amendments made to this section by Section 5 of Chapter 305 of the Statutes of 2008 apply to taxable years beginning on or after January 1, 2009.

(i) The amendments made to this section by Section 3 of Chapter 15 of the Fourth Extraordinary Session of the Statutes of 2009 apply to amounts withheld on wages beginning on or after January 1, 2009.

SEC. 3. Section 19167 of the Revenue and Taxation Code is amended to read:

19167. A penalty shall be imposed under this section for any of the following:

(a) In accordance with Section 6695(a) of the Internal Revenue Code, for failure to furnish a copy of the return to the taxpayer, as required by Section 18625.

(b) In accordance with Section 6695(c) of the Internal Revenue Code, for failure to furnish an identifying number, as required by Section 18624.

(c) In accordance with Section 6695(d) of the Internal Revenue Code, for failure to retain a copy or list, as required by Section 18625 or for failure to retain an electronic filing declaration, as required by Section 18621.5.

(d) Failure to register as a tax preparer with the California Tax Education Council, as required by Section 22253 of the Business and Professions Code, unless it is shown that the failure was due to reasonable cause and not due to willful neglect.

(1) The amount of the penalty under this subdivision for the first failure to register is two thousand five hundred dollars (\$2,500). This penalty shall be waived if proof of registration is provided to the Franchise Tax Board within 90 days from the date notice of the penalty is mailed to the tax preparer.

(2) The amount of the penalty under this subdivision for a failure to register, other than the first failure to register, is five thousand dollars (\$5,000).

(e) The Franchise Tax Board shall not impose the penalties authorized by subdivision (d) until either one of the following has occurred:

(1) Commencing January 1, 2006, and continuing each year thereafter, there is an appropriation in the Franchise Tax Board's annual budget to fund the costs associated with the penalty authorized by subdivision (d).

(2) (A) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that an amount equal to all first year costs associated with the penalty authorized by subdivision (d) shall be received by the Franchise Tax Board. For purposes of this subparagraph, first year costs include, but are not limited to, costs associated with the development of processes or systems changes, if necessary, and labor.

(B) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that the annual costs incurred by the Franchise Tax Board associated with the penalty authorized by subdivision (d) shall be reimbursed by the California Tax Education Council to the Franchise Tax Board.

(C) Pursuant to the agreement described in subparagraph (A), the Franchise Tax Board has received an amount equal to the first year costs described in that subparagraph.

(f) In accordance with Section 6695(g) of the Internal Revenue Code, for failure to be diligent in determining eligibility for earned income credit for returns required to be filed on or after the effective date of the act adding this subdivision.

SEC. 4. In future years, it is the intent of the Legislature to enact legislation that would expand the California Earned Income Tax Credit allowed by Section 17052 of the Revenue and Taxation Code, as state budget conditions permit, to benefit a broader section of working poor Californians.

SEC. 5. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.